IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3090 OF 2004

IN

FIRST APPEAL NO.1591 OF 2004

1.Shri Govindrao Laxman Pujari & Ors... Applicants

Versus

1.Shri Vasantrao Namdeo Jadhav & ors... Respondents

Mr.N.V.Walavalkar with Dilip Bodke for applicants

Mr.S.G.Deshmukh for respondents

WITH

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Mr.N.V.Walavalkar with Dilip Bodke for respondents

CORAM : P.V.KAKADE, J.

DATE : 1ST OCTOBER, 2004.

P.C.:

1. Heard the learned counsel for the parties. Perused the record.

2. The earlier application is filed by the Applicant to seek clarification of the Order dated 1.2.2003 passed by this Court as an interim, which was in terms of granting prayer clauses (a) and (b) till final disposal of this appeal in C.A.No.4424 of 2003. The said prayers are as follows :

> (a) To grant stay of the Judgment and Order passed by the learned IInd Addl. District Judge, Pandharpur in Civil Misc. Application No.178 of 2002 on 12.11.2003 during the pendency of this First Appeal;
>
> (b) To restrain the Respondents Nos.1 to 4 from allowing or from dealing with any financial

affairs of the Trust during the pendency of Civil Misc. Application No.178 of 2002.

3. The entire controversy arise out of Order dated 25.10.2002 passed by Joint Charity Commissioner, Latur along with Application under Section 41/D of the Bombay Public Trust Act, 1950 holding that the Respondent nos.1 to 4 Trustees of Shidha Sarana Shrikshetra Machnur, Brahmanpuri, Taluka Mangalwedha, Dist. Solapur be removed from the trusteeship for the grounds mentioned in his order. That order was carried in appeal before the Addl. District Judge, Pandharpur who after hearing both the parties under Section 72 of the Act hold that the impugned Order dated 25.10.2002 passed by Joint Charity Commissioner was liable to be set aside. He further thought it proper to remand the matter to the Joint Charity Commissioner for decision on merits, in the light of directions given by him. The said order of the Addl. District Judge, is carried in this First Appeal challenging the same on various grounds, in which course interim order in terms of prayer clauses (a) and (b), as referred to above, was passed by this Court on 1.2.2003.

4. The said Trust had originally 12 trustees. Respondent Nos. 1 to 4 are the trustees on one side whereas Petitioners in C.A.No.3091 of 2003 are other three trustees, who are on the either side. Respondent Nos.1 to 4 were held to be liable for acts like as misappropriation of the amount and misuse malpractices of the funds and affairs of the trust. The contempt petition was moved by three trustees alleging against the Respondent Nos.1 to 4 in respect of this impugned Order dated 1.2.2003 that they were interfering with the affairs of the trust and particularly handling and misusing the financial affairs for which they were categorically restrained. On this ground the present Application No.3090 of 2004 came to be filed on the ground that some clarification was required with regard to Order passed by this Court vis-a-vis Lower Court's Order. Mr. Walawalkar the learned counsel for the Applicant Nos.1 to 4 tried to submit that when this court passed order of Stay, it could not apply to Respondent Nos.1 to 4 so far as financial affairs of the Trust were concerned, and therefore, clarification to that effect was necessary that stay order of this court did not prevent the Respondent Nos. 1 to 4 from dealing with financial matters. Having considered all the

relevant submissions I need not go into details especially the order dated 1.12.2003 passed by this Court is found to be pervasive and amounts to blanket stay of the order passed by Addl. District Judge, Pandharpur. It also cannot be held that when Addl. District Judge order is stayed, Respondent Nos.1 to 4 are entitled to look into financial affairs because there is no such direction in that regard. Prayer clause (b), which was also granted, makes it specific that Respondent Nos.1 to 4 are also restrained from dealing with any financial affairs of the Trust during pendency of the First Appeal and shall continue to same state of affairs during the pendency of the Civil Misc. Application No.178 of 2002.

. Therefore, in my considered view there is absolutely no necessity of making any clarification with regard to the order dated 1.12.2003 passed by this Court and as such the Application deserves to be dismissed and stands dismissed.

5. So far as Civil Application No.3091 of 2004 filed by remaining three Trustees is concerned, it is for order of injunction restraining the respondents No.1 to 4 from

acting as Trustees of the Trust during the pendency of the First Appeal. In fact such separate application need not have been filed in view of order dated 1.12.2003. However, it was submitted by Mr.Deshmukh, the counsel for the Applicant in this Application, that the record is sufficient to speak about the activities of Respondent Nos.1 to 4 and therefore, positive order of injunction was necessary against them. I agree with the same proposition, especially in view of positive findings recorded by learned Joint Charity Commissioner in this regard by his order dated 25.10.2002, which show atleast prima facie the affairs of the Trust, including the financial affairs, should not be handled by Respondent Nos.1 to 4 in this regard. Hence the application No.3091 of 2004 is made absolute in terms of prayer clause (a).

6. At this stage the learned counsel for the Applicant Nos.1 to 4 Mr.Walawalkar submitted that this order should not take effect for four weeks, as they may consider to file Appeal against the Order. However, I am not inclined to grant any time in this regard, which would amount to putting premium on illegalities, prima

facie committed by Respondent Nos.1 to 4 Trustees.

7. With this direction both the Civil Applications are disposed of with no order as to costs.

C.C. expedited.